

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA

PLAINTIFF

VS. CASE NO. 05-CV-329-GSF(SAJ)

TYSON FOODS, INC, ET AL

DEFENDANTS

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DEPOSITION OF

RANDY YOUNG

Taken Thursday, October 2, 2008

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A P P E A R A N C E:

ON BEHALF OF THE PLAINTIFF:

RICHARD T. GARREN, ESQUIRE  
RIGGS, ABNEY, NEAL, TURPEN, ORBISON  
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ON BEHALF OF THE DEFENDANTS:

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1 A P P E A R A N C E S (Cont.):

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6 ROBERT GEORGE, ESQUIRE  
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24 ARKANSAS NATURAL RESOURCES COMMISSION  
25 101 East Capitol, Suite 350  
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ALSO PRESENT:

CRYSTAL PHELPS  
ADRIAN BABER  
PATRICK FISK  
JASON WEITHOLTER, VIDEOGRAPHER

1           general counsel for the Natural Resources  
2           Commission.

3           MS. PHELPS: Crystal Phelps,  
4           Associate General Counsel for the Arkansas  
5           Natural Resources Commission.

6           MR. BABER: Adrian Baber. I'm in the  
7           Conservation Division at Arkansas Natural  
8           Resources Division.

9           MR. SISK: Patrick Fisk. For manager  
10          of ANRC.

11          VIDEOGRAPHER: Thank you. The  
12          witness may be sworn in.

13   THEREUPON,

14                       RANDY YOUNG,  
15   having been called for examination and having first been  
16   duly sworn by the undersigned notary public, was  
17   examined and testified as follows:

18                       DIRECT EXAMINATION

19   BY MR. GRACE:

20   **Q**   All right, Mr. Young. My name is Richard  
21   Garren. I represent the State of Oklahoma. We met  
22   before but I have a couple of preliminary questions.

23           Have you ever given a deposition? I know you  
24   have testified before. Have you ever given a  
25   deposition?

1 significant part of it.

2 Q And it does go on to say, "Adequate management  
3 to distribute this litter uniformly over the basin  
4 and transport the excess litter out of the basin  
5 would probably remove the water quality problem."  
6 Do you see that?

7 A I see that.

8 Q You're familiar with the program referred to as  
9 BMP's, Inc. and their hauling of poultry waste?

10 A Yes. Yes.

11 Q Your agency has provided funding through 319  
12 for that program; correct?

13 A Correct.

14 Q Are you aware today whether or not that program  
15 is self-sustaining in the hauling of waste or have  
16 you seen any data or information recently?

17 A Both the State of Oklahoma and the State of  
18 Arkansas have since the conclusion of that work  
19 starting their own state programs to provide  
20 incentives to do that.

21 Q All right. And those incentives are in the  
22 form of subsidies to either the buyer of the waste  
23 or seller of the waste?

24 A Primarily the buyer.

25 Q Okay. And those incentives are to offset costs

1 of transportation in order to get it out of the  
2 nutrient limited water sheds?

3 **A** Correct.

4 **Q** Do you know -- has your agency made any studies  
5 or investigations as to whether that program could  
6 be self-sustaining without subsidy?

7 **A** It's my believe that it can not yet.

8 **Q** All right. This report goes on to say in that  
9 same paragraph near the middle -- couple of  
10 sentences down where it's talking about  
11 transportation costs, but it says, "Transportation  
12 cost effective -- it also encourages land  
13 application of the waste in excessive quantities and  
14 in proper times and in unsuitable locations and  
15 causes other waste mismanagement."

16 Do you agree that the cost of transportation  
17 has those effects?

18 **A** Might have before our regulatory program, but  
19 it doesn't now.

20 **Q** And the regulatory program you're talking about  
21 is that which went into place in January of 2007 in  
22 Arkansas?

23 **A** That's correct.

24 **Q** All right. Let's look at page 4707 of this  
25 same report if you would.

1     **A**     4707?

2     **Q**     Yes, sir. It's 42 of the actual document if  
3     that will help you.

4     **A**     All right.

5     **Q**     In the left hand column, the first bullet point  
6     identifies an agriculture research service in  
7     Durant, Oklahoma studying a nutrient movement in  
8     typical Illinois River basin soils. Do you know who  
9     that person was conducting those? Do you know  
10    whether that was Andrew Sharples?

11    **A**     Could have been, because I know he worked at  
12    Durant, Oklahoma. I just didn't know if it was this  
13    time frame or not.

14    **Q**     I don't know that it identifies him or not. I  
15    agree with you, but that's what drew my attention to  
16    it.

17           Essentially in the last long sentence, it  
18    starts by saying in that same paragraph, "The  
19    significant study conclusion was that after repeated  
20    applications of waste sufficient soluble phosphorous  
21    accumulated near the soil surface to potentially  
22    increase the soluble phosphorous concentrations in  
23    runoff to levels great enough to stimulate an  
24    increase in biological growth in streams and lakes."

25           Do you see that?

1     **A**     I see that.

2     **Q**     Do you agree with that statement?

3     **A**     I haven't heard any of those scientists make  
4     that statement.

5     **Q**     None of them? Even Dr. Sharples?

6     **A**     Huh-uh.

7     **Q**     Okay. But nonetheless, it's in this report  
8     published in cooperation with your agency in 1992;  
9     is it not?

10    **A**     Yeah. I just don't see how soluble phosphorous  
11    would accumulate on the surface.

12    **Q**     Have you -- you or your agency independently  
13    untaken such a study to determine whether it can or  
14    cannot do that?

15    **A**     We have contracted with the University of  
16    Arkansas and ARS to look at all of that in  
17    developing the phosphorus index.

18    **Q**     And did they draw any conclusion that actually  
19    contradicts the actual statement that we just read  
20    into the record here?

21                   MR. GEORGE: Object to form.

22                   WITNESS: They have never made this  
23                   statement in my presence.

24    BY MR. GARREN:

25    **Q**     Okay. And they have never made a statement

1 that contradicts it though either, have they?

2 **A** No. But they have never made that statement.

3 **Q** Okay. I guess it's the last guy that talks.

4 No, I'm not going to do that to you.

5 Do you -- so you're not aware of any particular  
6 study that would -- that you're familiar with that  
7 would contradict the statement that this report  
8 prepared in cooperation with your agency states in  
9 1992?

10 **A** I have never read anywhere until now about the  
11 accumulation of soluble phosphorous.

12 **Q** I'm assuming that because your agency  
13 cooperated with this in 1990 -- this 1991 report  
14 that was published in 1992 when you're the director  
15 of this agency, you likely read this report before  
16 it went out, did you not?

17 **A** I probably did not.

18 **Q** Okay.

19 **A** I don't know if you know how those type of  
20 studies come about or not. The federal agencies  
21 will typically contact the state --

22 **Q** I wasn't going to ask you that anyway. So,  
23 just hold on. I'm trying to try to get us out of  
24 here.

25 **A** All right.



1 MR. GEORGE: You're not going to let  
2 him finish his answer?

3 MR. GARREN: Since he asked his own  
4 question -- I don't think he needs to  
5 answer his own question.

6 MR. GEORGE: He was still answering  
7 your question.

8 MR. GARREN: I disagree with you,  
9 Mr. George.

10 MR. WALKER: He was answer the  
11 question of --

12 MR. GARREN: He was answering his own  
13 question and I didn't ask him to do so.

14 MR. GEORGE: So, you're not going to  
15 let him finish?

16 MR. GARREN: Not his own question and  
17 answer.

18 MR. WALKER: He was explaining why he  
19 didn't read it.

20 WITNESS: You should have let me  
21 answer that while you were looking for  
22 your stuff.

23 (THEREUPON, Exhibit Number 24 was  
24 marked and identified for the record.)

25 BY MR. GARREN:

1     **Q**     Let me hand you Exhibit Number 24 if I can  
2     please. I will represent to you this is a photo of  
3     a sign appearing at Lat/long as shown in the --  
4     where it says photo number and there is a Lat/long  
5     description there at an unmarked spring near  
6     Barrington Road in Arkansas -- Washington County.

7           Are you familiar with that area? Barrington  
8     Road in Washington County?

9     **A**     No.

10    **Q**     There are more than just one sign in that  
11    county and I believe maybe in Benton County but at  
12    least Washington County.

13           Have you see signs like this before?

14    **A**     No.

15    **Q**     Do you know whether or not your agency  
16    cooperates with any other agency such as the Health  
17    Department in providing water quality in order that  
18    warning signs such as we see in Exhibit 24 are then  
19    posted?

20    **A**     To my knowledge, we do not cooperate with the  
21    Health Department in an effort that would lead to  
22    posting of those.

23    **Q**     Okay. Do you know what agency in Arkansas is  
24    required to test spring water that might result in  
25    posting of such a warning sign?

1     **A**     I don't know that any agency is required to  
2     test spring water.

3     **Q**     Okay. Do you have any knowledge yourself  
4     through your experience as agency head as to why the  
5     Health Department would put such a warning on a  
6     spring?

7     **A**     I don't have any idea.

8     **Q**     So, you don't know what contaminants have been  
9     tested for or likely be tested for in order to  
10    justify this kind of warning?

11    **A**     No.

12    **Q**     Do you know if there is an agency that has  
13    responsibility in Arkansas for the quality of spring  
14    water that might be used in drinking or bathing  
15    purposes?

16    **A**     If it's swimming, then the Health Department I  
17    believe does have some responsibility in that area.

18    **Q**     And if it's drinking -- because we see this is  
19    a Health Department sanitarian's office sign  
20    purportedly.

21    **A**     Yes, sir.

22    **Q**     Do you know whether or not they have the  
23    authority --

24    **A**     If it's a spring that's a source of water for a  
25    public water system that they have jurisdiction

1 over, then, yeah, they would test it. But if it's  
2 just a spring on the back of my 40, then ain't  
3 nobody going to test it.

4 Q Okay. Let's take a break. I think I'm just  
5 about done here.

6 VIDEOGRAPHER: We're going off the  
7 record. The time is 2:16 p.m.

8 (THEREUPON, there was a brief period  
9 off the record.)

10 VIDEOGRAPHER: We're back on the  
11 record. The time is 2:20 p.m.

12 BY MR. GARREN:

13 Q One quick question. Did you or have you ever  
14 in the past raised poultry?

15 A My dad did.

16 Q Was he in the Arkansas area that he did that?

17 A Arkansas River Valley near Russellville.

18 Q What was the integrator that he worked with to  
19 grow chickens or turkeys?

20 A It started out as General Mills and then was  
21 ABI. A long time ago.

22 Q Long time ago.

23 MR. GARREN: I pass the witness.

24 WITNESS: 50s and 60s.

25 CROSS EXAMINATION

1 BY MR. GEORGE:

2 Q Good afternoon, Mr. Young. My name is Robert  
3 George. I represent Tyson Foods. You and I have  
4 met one time prior; is that right?

5 A Correct. In Tulsa.

6 Q In Tulsa.

7 I tried to listen closely to your testimony,  
8 but I want to make sure I understand some of the  
9 events that occurred in the development of  
10 Arkansas's regulatory program. So, you tell me if I  
11 misunderstood anything.

12 Is it true Mr. Young that the poultry companies  
13 formed a committee to develop and encourage BMPs for  
14 the use of dry poultry litter in the early 1990s?

15 MR. GARREN: Object to form as  
16 leading.

17 WITNESS: They did that in like 1989,  
18 1990.

19 BY MR. GEORGE:

20 Q And do I understand that that action by the  
21 poultry companies actually predated the formation of  
22 the animal -- I'm sorry. The governor's animal  
23 waste task force?

24 A It did.

25 Q Now, I think you testified that formal

1 enforcement of the Arkansas regs that were passed in  
2 2003 began January 1 of 2007; is that right?

3 **A** That's right.

4 **Q** Okay. Now is that the first time when nutrient  
5 management plans began to be used by poultry growers  
6 in the Illinois River water shed?

7 MR. GARREN: Object to the form.

8 WITNESS: No. As we implemented the  
9 recommendations of the animal waste task  
10 force, we started then working in  
11 cooperation with the integrators and them  
12 getting their growers to come in and sign  
13 up and get the plans -- started writing  
14 plans early 90s.

15 BY MR. GEORGE:

16 **Q** So, you would agree then that it's true that as  
17 far as back as the early 90s farmers on the Arkansas  
18 side of the Illinois River basis were making use of  
19 nutrient management plans?

20 **A** Yes.

21 **Q** And I believe you testified earlier that in  
22 connection with the Governor's animal waste task  
23 force that around 1993 the growers made -- I'm  
24 sorry. The integrators made a commitment to  
25 encourage their growers to sign up for nutrient

1 management plans. Do you recall saying that?

2 **A** Yes.

3 **Q** Did the integrators honor that commitment?

4 **A** Yes.

5 **Q** Now when these voluntary nutrient management  
6 plans were being written back in the early 90s, who  
7 was responsible for preparing those?

8 **A** We got a grant -- a 319 grant provided money to  
9 our local conservation districts. They hired the  
10 technicians to write those plans. And they were  
11 being written under the supervision of the Feds --  
12 the NRCS personnel in the local conservation  
13 district offices.

14 **Q** You mentioned earlier that the formal  
15 regulatory program for the State of Arkansas around  
16 the use of dry poultry litter was passed by the  
17 legislature in 2003; is that right?

18 **A** Uh-huh. Correct.

19 **Q** Did the poultry companies oppose that  
20 legislation in any way?

21 **A** No. They helped me get it passed.

22 **Q** I believe you testified that there was a bit of  
23 a grace period from the time that legislation was  
24 enacted until January the first of 2007. Do you  
25 recall saying that?

1     **A**     Yes.

2     **Q**     And what occurred during that great period in  
3     terms of the management or the regulation of the  
4     land application of poultry litter?

5     **A**     We continued with our voluntary program, with  
6     writing the plans while we were developing the  
7     regulations to implement the new state program.

8     **Q**     If a poultry grower after the legislation was  
9     passed in 2003 wanted to put down poultry litter,  
10    but it didn't have a nutrient management plan, would  
11    they just put down whatever they wanted to under  
12    Arkansas law?

13    **A**     No. One of the things we did was -- in  
14    cooperation with ARS was Phillip Moore -- is get him  
15    to do some quick research and help develop what he  
16    recommended to us, the term we use -- the protective  
17    rate that was intended to be protective of water  
18    quality in this interim period till we could get the  
19    nutrient management plans written and in place.

20    **Q**     Can you add a little flesh around what the  
21    protective rate was? Was it so many tons per acre  
22    or how was it expressed?

23    **A**     I believe it is in tons per acre how it's  
24    expressed.

25    **Q**     Do you recall, Mr. Young, if the protective



1 rate was more restrictive than the rate that would  
2 typically occur under a plan with the Arkansas P --

3 MR. GARREN: Object to form.

4 WITNESS: What I told Phillip that I  
5 wanted when we asked him to start working  
6 on that was something that would be as  
7 stringent or more stringent than what he  
8 felt the plan would provide for us. So, I  
9 have got to believe that it's at least as  
10 stringent, if not more so.

11 BY MR. GEORGE:

12 Q So, from 2003 when the laws were passed until  
13 January of 2007, a person using poultry litter in  
14 the Arkansas side of the Illinois River basin either  
15 had to have a nutrient management plan or applied  
16 the protective rate; is that correct?

17 A Correct.

18 Q You were asked some questions, Mr. Young, about  
19 the hauling of poultry litter out of the Illinois  
20 River water shed by an organization called BMPs,  
21 Inc. Do you recall that?

22 A Yes.

23 Q Are you aware that several poultry companies  
24 have contributed significant amounts of money in  
25 support of the efforts of BMPs, Inc.?

1 MR. GARREN: Object to form.

2 WITNESS: Paid for all of it except  
3 for what we contributed from the 319  
4 grant.

5 BY MR. GEORGE:

6 Q Were the poultry companies to your knowledge  
7 forced or required by some law or regulation to  
8 contribute financially to organizations like BMPs,  
9 Inc. to help reduce the amount of poultry litter  
10 applied in the Illinois River basin?

11 MR. GARREN: Object to form.

12 WITNESS: It was my understanding --  
13 and I might be corrected -- that the  
14 settlement agreement did provide for them  
15 to create BMPs, Inc. and to finance it.

16 BY MR. GEORGE:

17 Q Now, Mr. Young, are you aware of the fact that  
18 there are two different organizations, one called  
19 Eucha Spavinaw BMPs, Inc. and the other one called  
20 BMPs, Inc.? Is that new information to you?

21 A That's new information to me.

22 Q I will leave it alone.

23 Mr. Young, in your view as the chief regulator  
24 for non-point source pollution in the State of  
25 Arkansas, have the poultry companies been good

1 citizens in terms of cooperating with the state's  
2 efforts to manage the use of poultry litter as  
3 fertilizer?

4 MR. GARREN: Object to the form.

5 WITNESS: They cooperated with us on  
6 implementing the voluntary program. I  
7 would like to have it when I tried to get  
8 the regulatory program, but it didn't  
9 happen. And they were cooperative and  
10 helped me lobby to get the regulatory  
11 program in place in 2003. And are  
12 continuing to cooperate through the pledge  
13 of money to help provide the match on this  
14 Illinois River crept proposal.

15 BY MR. GEORGE:

16 Q As a general matter, Mr. Young, do you agree  
17 with the use of poultry litter as fertilizer in the  
18 Arkansas portion of the Illinois River water shed  
19 has become more tightly regulated over the past two  
20 decades?

21 MR. GARREN: Object to the form.

22 WITNESS: Without a doubt. Without a  
23 doubt.

24 BY MR. GEORGE:

25 Q Given those tighter regulations, have litter

1 application rates in the Arkansas portion of the  
2 Illinois River water shed been reduced over the past  
3 two decades?

4 **A** Sure.

5 MR. GARREN: Object to the form.

6 BY MR. GEORGE:

7 **Q** You have your stack of exhibits? I don't know  
8 if you hung on to all of them. Could you find  
9 Exhibit Five -- which for the record is the Arkansas  
10 non-point source management status report from 1999.

11 **A** 1991?

12 **Q** I'm sorry. 1991. I'm sorry. Let's go to  
13 Exhibit Six, which is a Morris Creek project report.  
14 You discussed Exhibit Six with Mr. Garren. You  
15 recall that?

16 **A** Yes.

17 **Q** You were asked about the second page where it  
18 listed project partners. And Mr. Garren asked you  
19 specifically whether or not the poultry companies or  
20 the poultry integrators were project partners. I  
21 see where the Arkansas Cattleman's Association was a  
22 project partner on the Morris Creek study. You see  
23 that?

24 **A** Yes.

25 **Q** Why would the Arkansas Cattleman's Association

1 have an interest in the study of non-point source  
2 pollution or potential pollution in the Morris Creek  
3 area?

4 MR. GARREN: Object to the form.

5 BY MR. GEORGE:

6 Q Do you know?

7 A I can tell you what my opinion is.

8 Q All right. Tell me what your opinion is.

9 A Cattlemen benefit from using poultry litter as  
10 fertilizer. Many cattlemen are also poultry  
11 growers.

12 Q Can cattle be the source of non-point source  
13 pollution?

14 MR. GARREN: Object to form.

15 WITNESS: Sure.

16 BY MR. GEORGE:

17 Q How so?

18 A Through direct deposit on the landscape.

19 Q Now, let's go to Exhibit Five, which is the  
20 non-point source management status report from 1991.

21 You were asked some questions on the -- in  
22 regard to the information on Bates number page 16.  
23 Turn it over.

24 MR. GARREN: I'm sorry, counselor.

25 Your Exhibit Five page what?

1 MR. GEORGE: 16.

2 BY MR. GEORGE:

3 Q You see the box on the top right hand corner,  
4 page 26, manure produced in Arkansas?

5 A Yes.

6 Q What is the -- according to this document --  
7 the total tonnage of manure produced by cattle in  
8 Arkansas each year?

9 A Just cattle or do you want dairy, too?

10 Q If you can add them together in your head, that  
11 would be great.

12 A 2,785,000 in tons per year.

13 Q Is that more or less manure per year than what  
14 is reported for broilers?

15 A More than double.

16 Q Let's go to Exhibit Nine, Mr. Young, which is  
17 entitled Optimizing BMPs, water quality and  
18 sustained agriculture in the Lincoln Lake water  
19 shed. You were asked some questions by Mr. Garren  
20 about this report prepared by the University of  
21 Arkansas?

22 A Yes.

23 Q Turn to the first page and the first full  
24 paragraph. You see the sentence that -- it's about  
25 mid-way through right after the parentheses. It

1 says, "Rolling hills in this region are home to  
2 poultry farms and pastures that produce abundant  
3 forage for beef and dairy cattle."

4 You see that?

5 **A** No. We need to back up and start again about  
6 where you are.

7 **Q** Sure. Are you on the section Executive  
8 Summary?

9 **A** Yes.

10 **Q** The first full paragraph. I believe it is the  
11 fourth sentence after the citation to Edwards.

12 **A** Okay. I'm with you.

13 **Q** Do you see where it says, "The rolling hills in  
14 this region" -- and this region is the Illinois  
15 River water shed; right?

16 **A** Right.

17 **Q** "Rolling hills in this region are home to  
18 poultry farms and pastures that produce abundant  
19 forage for beef and dairy cattle."

20 You see that?

21 **A** I see that.

22 **Q** Do beef cattle deposit animal manures on  
23 pastures in the Morris Creek water shed and the  
24 Illinois River water shed?

25 **A** Yes.

1 Q Are you aware that cattle manure contains  
2 nitrogen, phosphorus and bacteria?

3 A Sure.

4 Q Has the State of Arkansas identified cattle as  
5 a potential source of nitrogen, phosphorus and  
6 bacteria runoff from pastures in Northwest Arkansas?

7 A Sure.

8 Q When this report, Exhibit Number Nine, talks  
9 about animal manures resulting in runoff, is it  
10 talking about just poultry litter or manure from all  
11 types of livestock including cattle?

12 A It would be all types of livestock.

13 Q Find Exhibit Ten in your stack, Mr. Young.  
14 This is the actual report of the Governor's task  
15 force on animal waste. You were asked some  
16 questions about that, were you not?

17 A I was.

18 Q It was published in 1993. Do you see the cover  
19 page?

20 A Yes.

21 Q What animals are on that cover page other than  
22 just chickens and turkeys?

23 A Dairy cows, beef cows and swine.

24 Q Why is that?

25 A Animal waste.



1 Q Is it true, Mr. Young, that the work of the  
2 Governor's task force on animal waste for the State  
3 of Arkansas in the early 90s focused not just on  
4 poultry litter but on all types of animal waste?

5 A Absolutely.

6 Q Let's go to Exhibit 12. These are the written  
7 comments with respect to the agricultural non-point  
8 source water pollution prevention and abatement  
9 program. You were asked some questions by  
10 Mr. Garren about this?

11 A Yes, sir.

12 Q Other than representatives of the poultry  
13 industry, who else signed an opposition to this  
14 particular program back in 1993?

15 A The Arkansas Farm Bureau. The Arkansas Pork  
16 Producers. The Arkansas Cattlemen, dairy men, rice.

17 Q Why were those other industries beyond just the  
18 poultry industry concerned -- if you know -- about  
19 the regulatory program that's being discussed in  
20 this document?

21 MR. GARREN: Object to the form.

22 WITNESS: The poultry growers, the  
23 pork producers and the dairy men were all  
24 going to be directly regulated. The other  
25 ag were there in support of their cohorts

1                   and wanting to make sure it didn't spread  
2                   to East Arkansas.

3       BY MR. GEORGE:

4       **Q**       Even row croppers in eastern Arkansas were  
5       concern about this program; is that right?

6       **A**       That's right.

7       **Q**       And do I understand correctly that the  
8       consultant out of Virginia that was hired by your  
9       agency back in the early 90s actually recommended a  
10      voluntary as opposed to a mandatory program; is that  
11      right?

12      **A**       That's correct.

13                         MR. GARREN: Object to form.

14      BY MR. GEORGE:

15      **Q**       And is that the same position that was taken by  
16      the folks that were commenting in opposition to the  
17      regulatory program that signed Exhibit Number 12?  
18      That it should be voluntary?

19      **A**       Yes.

20      **Q**       Now, in 1993, Mr. Young, did the State of  
21      Oklahoma have a mandatory poultry litter regulation  
22      program?

23      **A**       No.

24      **Q**       How long after 1993 -- if you know -- was it  
25      before the State of Arkansas development its own

1 mandatory poultry litter regulation program?

2 **A** I actually made a trip and a presentation to  
3 the -- I guess it was an animal waste task force  
4 that they had created in Oklahoma giving testimony  
5 about our program in Arkansas when they were  
6 considering trying to put something in place. And I  
7 want to say that was four or five years after we had  
8 started ours.

9 **Q** In 1993 when this debate was occurring in  
10 Arkansas regarding a voluntary versus a mandatory  
11 program, Mr. Young, are you aware of any other state  
12 that had -- at that time a mandatory enforcement  
13 program for the land application of poultry litter?

14 MR. GARREN: Object to the form.

15 WITNESS: No. The recommendations  
16 that Mr. Gettis made to us was essentially  
17 the state of the art with what the other  
18 states in the East Coast were doing that  
19 he had been associated with.

20 BY MR. GEORGE:

21 **Q** It's fair to say after 1993 that the trend in  
22 agricultural producing states seemed to move slowly  
23 toward a mandatory program?

24 **A** Yes.

25 **Q** And that trend ultimately made it both to

1 Oklahoma and Arkansas; is that right?

2 **A** That's correct.

3 **Q** Find Exhibit 13, which I believe is the memo to  
4 you from the Northwest Arkansas farm. Let's get the  
5 setting correct. This memo is dated June of 2003;  
6 correct?

7 **A** Correct.

8 **Q** And did this memo come to you --

9 MR. GARREN: Actually, Counsel, I  
10 think it July.

11 MR. GEORGE: I'm just looking at the  
12 date -- not date receive, but the date it  
13 was written.

14 MR. GARREN: Are you looking at  
15 Exhibit 13? I'm sorry. You're on the  
16 second page I. Apologize.

17 BY MR. GEORGE:

18 **Q** This memo is dated June 2003; is that right,  
19 Mr. Young?

20 **A** June 10th.

21 **Q** Thank you.

22 And did this memo come to you before or after  
23 Arkansas General Assembly passed its litter  
24 application and nutrient management laws?

25 MR. GARREN: Object. Asked and

1                   answered.

2                   WITNESS: It came to me after the  
3                   General Assembly passed the laws.

4       BY MR. GEORGE:

5       Q       And is it fair to say that the Northwest  
6       Arkansas Farm Bureau was a little upset over those  
7       laws?

8                   MR. GARREN: Object. Asked and  
9                   answered.

10       BY MR. GEORGE:

11       Q       Is that the way you interpreted their position?

12       A       Yeah. They were more than a little upset.  
13       They were real upset.

14       Q       I think you testified earlier in response to  
15       some questions by Mr. Garren that they did not like  
16       it at all. Do you recall saying that?

17       A       That's right.

18       Q       When you say "they", were you referring to the  
19       poultry companies or to northwest Arkansas Farm  
20       Bureau?

21       A       Northwest Arkansas Farm Bureau.

22       Q       And who were they representing in terms of  
23       being a voice for concern?

24       A       Well, they were representing their members,  
25       which would be beef cattlemen and poultry growers.

1 Q But not the poultry companies; correct?

2 A No.

3 Q In the first paragraph of Exhibit Number 13,  
4 Mr. Young, there is a statement that says -- it's  
5 the next to the last sentence. "It is no mistake  
6 when comparing cattle numbers in Northwest Arkansas  
7 to any other region in the country that we are  
8 ranked in the top ten."

9 Do you see that?

10 A I do.

11 Q Next to the last sentence in the first  
12 paragraph?

13 A I do now.

14 Q Do you know if that is true? That the number  
15 of cattle raised in northwest Arkansas would put  
16 them in the top ten regions in the country in terms  
17 of cattle production?

18 MR. GARREN: Object to the form.

19 WITNESS: I think that's true.

20 Washington and Benton County are two of  
21 the top beef producing counties in the  
22 country.

23 BY MR. GEORGE:

24 Q Can you find Exhibit 23, Mr. Young?

25 A I'm sure glad you put these in order for me.

1 Q If they were, they won't be when we get through  
2 here.

3 A I'm good. I'm keeping them straight.

4 Q You were asked some questions about this study  
5 that's discussed in Exhibit 23 by somebody by the  
6 name of Bowen in 1978. Would you turn to page 2688?  
7 And read what is reported at the bottom in numbered  
8 paragraph one as the first important finding by  
9 Mr. Bolin's study of the Illinois River water shed.

10 A During the period of observation, approximately  
11 90 percent of the total amount of phosphorous from  
12 all sources was contributed by municipal waste water  
13 treatment plants.

14 Q Now, since the late 70s and 80s and 90s going  
15 forward, have the waste water treatment plant in  
16 northwest Arkansas improved their ability to reduce  
17 the amount of phosphorous they're putting out?

18 A Yes.

19 Q You were asked some questions as well about  
20 Exhibit Number 22, which Mr. Garren frequently  
21 referred to as a report published in cooperation  
22 with your agency.

23 A Yes.

24 Q And I believe, Mr. Young, you wanted to tell us  
25 why it was that you might not have read that report

1 before it came out. Can you tell us that?

2 **A** Typically when those federal agencies are  
3 trying to get funding to do studies like this, they  
4 will contact agencies like mine and the Oklahoma  
5 Conservation Commission and say, "We are putting  
6 forth a proposal to get funding to do this river  
7 basin study. We would like for you to sign on as a  
8 cooperating agency with us and we will send you a  
9 draft letter we would like you to sign saying you're  
10 going to cooperate with us."

11 And then they get the letter and then they get  
12 funding and away they go with the study. And I may  
13 or may not see the study when it gets finished.

14 **Q** And is it your testimony, Mr. Young, that you  
15 don't recall actually seeing Exhibit Number 22, the  
16 Illinois River Cooperative River Basin report, prior  
17 to it being published?

18 **A** Not until this morning.

19 **Q** Okay. I don't think you have seen it until  
20 today; is that right?

21 **A** Until today.

22 **Q** You were asked about composting and whether on  
23 the Arkansas side of the basin the regulations  
24 require the composting of poultry litter. You  
25 recall that?



1     **A**     Yes.

2     **Q**     It was your testimony that composting is not  
3     required?

4     **A**     That's correct.

5     **Q**     Do you know, sir, whether or not the State of  
6     Oklahoma on the Oklahoma side of the Illinois River  
7     water shed requires poultry growers to compost  
8     litter?

9     **A**     Everything I have seen makes no mention of it.  
10    So, I don't think they do.

11    **Q**     You were asked about the requirement in the  
12    Arkansas statutes for a complaint that would result  
13    in an enforcement action to be notarized? Do you  
14    recall that?

15    **A**     Yes.

16    **Q**     What is the -- if you know, what's the  
17    reasoning or the rationale behind requiring a  
18    notarizing?

19                   MR. GARREN: Object to the form.

20                   WITNESS: In the give and take during  
21                   the legislation session, the Arkansas Farm  
22                   Bureau lobbied to get that put in the  
23                   legislation and we reluctantly agreed to  
24                   it.

25    BY MR. GEORGE:

1 Q Mr. Young, have you in the past year or so  
2 received any information from Oklahoma Secretary of  
3 the Environment, Miles Tolbert's office, suggesting  
4 that he may have uncovered some violations of  
5 Arkansas regs in the water shed?

6 A Yes.

7 Q Tell the court a little bit about what you  
8 perceived and what you did in response to that.  
9 First of all, let me back up.

10 Was Mr. Tolbert's complaint notarized?

11 A No.

12 MR. GARREN: Object to the form.

13 BY MR. GEORGE:

14 Q Did your agency investigate it nonetheless?

15 MR. GARREN: Objection. Outside  
16 scope of direct.

17 WITNESS: We did. And some of my  
18 staff pointed out to me it wasn't  
19 notarized. And I said, "That's fine. I  
20 want you to inspect them anyway."

21 BY MR. GEORGE:

22 Q Okay. And by inspection -- tell us and the  
23 court exactly what it is you did to inspect the  
24 complaint by Mr. Tolbert.

25 A Our staff, Mr. Fisk over here in fact,

contacted the technician in that area and asked them to go look at it. He may have gone with them in some instances to look at it to see if it in fact was a violation.

Q And was it in fact a violation?

MR. GARREN: Object to the form.

WITNESS: One or two of them may have been.

BY MR. GEORGE:

Q You recall how many alleged violations were reported by Mr. Tolbert? Were there several?

**A** There was more than one.

Q And did your investigation determine that most of those reported alleged violations were in fact not violations?

**A** Yes.

Q Do you have any explanation as to why Mr. Tolbert would make a false report of a violation of Arkansas law?

MR. GARREN: Object to the form.

WITNESS: I have no idea.

MR. GEORGE: I pass the witness.

MR. WALKER: No questions.

MR. SMILEY: No questions.

MR. MOULTON: Mr. Garren, I have got

1           some questions.

2           MR. GEORGE: Charlie, I didn't mean  
3           to jump in front of you.

4           MR. MOULTON: That's fine. You guys  
5           take your shot and take your time.

6           CROSS EXAMINATION

7           BY MR. MOULTON:

8           Q     Mr. Young, I just want to clarify a few things  
9           for the record if I could. One is, if you pull out  
10          your CV -- which I believe is Exhibit Number One.  
11          Can you get that?

12          A     Yes.

13          Q     Through your many years of a state employee --  
14          they have got somewhat of a laundry list of your  
15          accomplishments and your involvements. But one of  
16          the organizations that you were a member of is not  
17          listed. And that's the Pollution Control and  
18          Ecology Commission; is that correct?

19          A     I am a member of it, yes.

20          Q     Would you tell the court exactly what the  
21          Pollution Control and Ecology Commission does?

22          A     It's the rule making body, the appeal body for  
23          the Department of Environmental Quality.

24          Q     So, it would be fair for me to say that -- and  
25          how long have you sat on that commission?

1     **A**     In my own behalf, since 1985.

2     **Q**     And you're a member of a number of different  
3     chairs or used to be at least a number of different  
4     chairs. I think it's down to one chair; is that  
5     right?

6     **A**     I have been the one and only chairman of that  
7     commission's regulation committee.

8     **Q**     And what does the regulations committee do?

9     **A**     It essentially oversees the development and  
10    adoption of every regulation of the commission.

11    **Q**     Mr. Garren asked you some questions about the  
12    dichotomy between the various agencies and their  
13    programs. And I thought I heard you testify or at  
14    least give the impression that Natural Resource  
15    Commission has complete overwatching authority over  
16    all non-point source programs. Do you recall that?

17    **A**     Yeah. I recall that.

18    **Q**     Is that indeed the case?

19    **A**     For agriculture it is, but DEQ implements the  
20    storm water program, which I guess is a non-point --

21    **Q**     It also -- they also implement or have  
22    authority over regulation number 15 of a mining  
23    program and that has some --

24    **A**     Yes.

25    **Q**     -- non-point source applications as well, does

1 it not?

2 **A** Yes. Our lead is for the "agriculture"  
3 non-point.

4 **Q** All right. Would you be so kind as to take out  
5 Exhibit Number Two, please? Have you got that in  
6 front of you, Mr. Young?

7 **A** Yes.

8 **Q** That is the one that's titled Arkansas Soil and  
9 Water Conversation Commission Non-point Source  
10 Pollution Management Program that's dated  
11 September 1st, 1991; is that right?

12 **A** Yes.

13 **Q** You recall Mr. Garren asking you some questions  
14 about this exhibit, do you not?

15 **A** I do.

16 **Q** Turn if you would to -- I believe it's section  
17 five I think. I'm looking at -- here, I might have  
18 a wrong -- are you on section five?

19 **A** What page?

20 **Q** You know, it's really hard to read, Mr. Young.  
21 I think it's page 11 of 12. There's a section there  
22 that talks about federal consistence. You see that?

23 **A** Yes.

24 **Q** Do you have any idea what is meant by federal  
25 consistence with that section?

1     **A**     To me, that would have to mean that this is  
2     consistent with other federal programs and laws.

3     **Q**     All right.

4     **A**     And we are saying that there are no known  
5     inconsistencies.

6     **Q**     I thought plaintiff's Exhibit Number Five --  
7     this one is the non-point source management program  
8     that's dated July 1991.

9     **A**     Yes.

10    **Q**     Mr. Garren asked you some questions about this,  
11    did he not?

12    **A**     Yes.

13    **Q**     Turn to page five of that document. Are you  
14    with me, Mr. Young?

15    **A**     Yes.

16    **Q**     And the column -- second column, top paragraph,  
17    it talks about submitting this report to region six  
18    review and comment. Do you see that?

19    **A**     Yes.

20    **Q**     And based on that I'm assuming that indeed  
21    happened. Is there any reason for you to disbelieve  
22    that that -- that this report did not indeed get  
23    submitted to EPA?

24    **A**     I'm sure it did.

25    **Q**     How about Plaintiff's Exhibit Number Six? This

1 one is titled Morris Creek project 1990 and 1998.

2 You recall Mr. Garren asking some questions about  
3 this report as well, do you not?

4 **A** I do.

5 **Q** There isn't page numbers on this one. I  
6 apologize. But on page eight, there is some  
7 discussion about producer impacts. Are you on that  
8 page with me, Mr. Young?

9 **A** Yes.

10 **Q** In the middle section there, it talks about a  
11 particular grower being commended with an  
12 environmental management or environmental excellence  
13 award for EPA region six. You see that?

14 **A** I see that.

15 **Q** So, would it be fair for me to say that EPA was  
16 aware of this particular project in 1990?

17 MR. GARREN: Object to the form.

18 WITNESS: Absolutely. I think it  
19 mentioned earlier that I, along with  
20 several others, held up the Morris Creek  
21 project as a poster child for the  
22 non-point program.

23 BY MR. MOULTON:

24 **Q** How about plaintiff's Exhibit Number Eight?  
25 This one is titled Arkansas Water Resource Center.



1     **A**     Okay.

2     **Q**     If you turn to the Bates number, it's 109 at  
3     the bottom of the page.

4     **A**     Yes.

5     **Q**     Right at the top of the acknowledgments, there  
6     is a line that says that, "The office gratefully  
7     acknowledged the support of -- in addition to your  
8     agency the U. S. Environmental Protection Agency,  
9     Region Six"; is that right?

10    **A**     Correct.

11    **Q**     So, would you agree with me that EPA was aware  
12    and participated in this particular project as well?

13    **A**     Absolutely.

14    **Q**     Turn to Plaintiff's number nine, Mr. Young.  
15    This one is titled Optimizing BMPs, Water Quality  
16    and Sustain Agriculture in the Lincoln Lake Water  
17    Shed.

18            You recall Mr. Garren asking you some questions  
19    about this report?

20    **A**     Yes.

21    **Q**     If you turn to page 23, it talks about the EPA  
22    feedback loop. Are you with me?

23    **A**     Yes.

24    **Q**     It says, "The EPA works successfully with  
25    Morris Creek water shed project teams"; is that

1 right?

2 **A** Yes.

3 **Q** So, it would fair for me to say that EPA was  
4 aware and worked in connection with your agency on  
5 this particular report; is that right?

6 **A** That's correct.

7 **Q** Plaintiff's number 16. I apologize, Mr. Young.  
8 Page 14 of this report speaks in terms of  
9 Arkansas management's program is administered  
10 through projects. And it talks about the federal  
11 match for the projects.

12 Would it be fair for me to say that that match  
13 came from EPA?

14 **A** The federal match?

15 **Q** Yes.

16 **A** Yes.

17 **Q** On page 17 it talks about management program  
18 update and the first line of bullet points speaks in  
19 terms of what your agency has done to implement  
20 various EPA programs; is that correct?

21 **A** Yes.

22 **Q** And EPA is aware of these programs and has some  
23 oversight under those programs, have they not?

24 **A** Heard periodic reports from me as we worked on  
25 the legislation and moved to get it enacted.

1 Q All right. Go to Plaintiff's Number 23.

2 Mr. Garren asked you some questions about this  
3 report titled non-point source pollution assessment  
4 summaries for the Arkansas River basin. I have just  
5 got one question related to it. If you turn to the  
6 Bates stamp number 2689 -- are you with me,  
7 Mr. Young?

8 A Yes.

9 Q There was a question about the Illinois River  
10 exceeds Arkansas water quality standard for  
11 phosphorous. Do you recall that?

12 A I do.

13 Q If you go to the very next line -- the very  
14 next line of -- I shouldn't say the very next line.  
15 The very next paragraph talks in terms of, "The  
16 quality of water in the Illinois River and in most  
17 of the streams in segment 3J is still remarkably  
18 good at the present time."

19 Do you see that?

20 A I see that.

21 Q I'd like to ask you how you can reconcile the  
22 line that says, "Illinois River exceeds Arkansas  
23 water quality standards", with the statement not  
24 more than three or four lines down that says, "The  
25 water quality in the Illinois River is remarkable

1 good"? Or can you reconcile those two statements?

2 MR. GARREN: Objection to the form.

3 WITNESS: I can't reconcile. Keep in  
4 mine, that was just a graduate student  
5 writing a master's thesis. I remember  
6 when I wrote some of those.

7 BY MR. MOULTON:

8 Q Mr. Young, I believe you already stated in  
9 response to my questions that EPA has been aware and  
10 been involved in your programs for quite some  
11 sometime; is that correct?

12 A Yes.

13 Q How many times has EPA ever insisted that you  
14 adopt a regulatory program to deal with the land  
15 application of poultry litter?

16 MR. GARREN: Objection. Outside the  
17 scope of direct.

18 WITNESS: They never have made that  
19 suggestion. We in fact told them that's  
20 what we were going to try to do.

21 BY MR. MOULTON:

22 Q Have you got the animal waste task force report  
23 in front of you? I think that one is --

24 A Ten?

25 Q Ten. Let's see if I can dig it up.

1           Would you turn to the page that's been Bates  
2 stamped 1619?

3     **A**     All right.

4     **Q**     This report came out in 1993; is that correct?

5     **A**     Correct.

6     **Q**     Would you read the first line in paragraph --  
7 the first paragraph on page 1619 please?

8     **A**     "Both the EPA and the U.S. Agricultural  
9 Department are encouraging a voluntary approach to  
10 handling non-point source pollution that could  
11 probably be traced to animal agriculture."

12    **Q**     So, even though you thought in 1993 that a  
13 regulatory program would be appropriate -- at least  
14 in 1993 -- as I read this document, EPA and USDA  
15 were encouraging a voluntary program to deal with  
16 non-point source pollution; is that right?

17    **A**     That's correct.

18    **Q**     Mr. Young, in your position as a commissioner  
19 on the Pollution Control and Ecology Commission, you  
20 are somewhat familiar with the regulatory programs  
21 that deal with hazardous waste and solid waste, are  
22 you not?

23    **A**     Yes.

24    **Q**     How many times before 2007 has EPA ever  
25 informed you that the land application of poultry

1 litter is a violation of any Arkansas solid waste  
2 laws?

3 MR. GARREN: Objection to form.

4 WITNESS: They never have.

5 BY MR. MOULTON:

6 Q How many times has the EPA ever informed you  
7 that prior to 2007 the land application of poultry  
8 litter is a violation of RICRA?

9 MR. GARREN: Objection to form.

10 Outside the scope of direct.

11 WITNESS: They never have.

12 BY MR. MOULTON:

13 Q How many times prior to 2007 has EPA informed  
14 you that the land application of poultry liter has  
15 violated any Oklahoma state laws?

16 MR. GARREN: Objection to form. It's  
17 outside the scope.

18 WITNESS: They have never.

19 BY MR. MOULTON:

20 Q How many times has the EPA ever informed you  
21 prior to 2007 that the application of poultry litter  
22 is a violation of Arkansas hazardous waste laws?

23 MR. GARREN: Objection to form.

24 Outside the scope.

25 WITNESS: They never have notified us

1                   of that.

2       BY MR. MOULTON:

3       **Q**     And how many times has EPA ever informed you  
4       that the application of poultry litter is a  
5       violation of the Superfund law?

6                   MR. GARREN:   Same objection.

7                   WITNESS:   They never have advised us  
8       of that.

9       BY MR. MOULTON:

10      **Q**     Has the EPA ever informed you -- or how many  
11      times has the EPA informed you that the nutrient  
12      management plan that Arkansas has adopted is  
13      violating either state or federal law in any of the  
14      environmental media?

15                  MR. GARREN:   Objection -- same  
16      objection.

17                  WITNESS:   They have always had  
18      positive comments to say about the program  
19      we enacted.

20      BY MR. MOULTON:

21      **Q**     Mr. Young, you're familiar with Oklahoma's  
22      nutrient management program, are you not?

23      **A**     Yes.

24      **Q**     How does it compare to Arkansas' nutrient  
25      management program?

1 MR. GARREN: Object so form.

2 WITNESS: It's not as comprehensive  
3 as Arkansas'.

4 BY MR. MOULTON:

5 Q So, would you say Arkansas has a superior  
6 nutrient management program as compared to Oklahoma?

7 MR. GARREN: Object to form.

8 WITNESS: Without a doubt.

9 MR. MOULTON: I pass the witness.

10 RE-DIRECT EXAMINATION

11 BY MR. GARREN:

12 Q Mr. Young, looking at Exhibit 22 again --  
13 you're not -- in talking about not having ever seen  
14 this document produced in cooperation with your  
15 agency -- implying that somebody on your staff  
16 didn't have the opportunity to see the draft in  
17 advance of its publication, are you?

18 A No. I'm saying I have not.

19 Q Okay.

20 A I have not seen it before today.

21 Q Okay. And generally policies and procedures --  
22 when you as a cooperative agency you would have  
23 somebody authorized in your agency under your  
24 direction and control reviewing these drafts before  
25 they're published, would you not?



1     **A**     That would be our hope.

2     **Q**     All right. Generally that's the way it occurs  
3     though, is it not?

4     **A**     Yes.

5     **Q**     Would you agree with me that in Arkansas prior  
6     to 2003 there was no regulatory limit on the amount  
7     of poultry waste that could be land applied?

8     **A**     Yes. Correct.

9     **Q**     And when Mr. George in the form of his question  
10    said that in the last two decades tighter  
11    regulations are now in effect and they have been  
12    regard to poultry waste application, in fact those  
13    tighter regulations didn't go into effect until  
14    January of 2007. Would you agree? Enforcement  
15    regulations?

16                   MR. GEORGE: Object to form.

17                   WITNESS: Not all of them. Some of  
18    them did.

19    BY MR. GARREN:

20    **Q**     But some of those were still voluntary, were  
21    they not, until 2007 in Arkansas?

22    **A**     The protected rate is what disappeared in 2007.

23    **Q**     But isn't it a fact your enforcement ability  
24    for maintaining regulations with regard to poultry  
25    waste application were not in effect until 2007?

1 MR. GEORGE: Object to the form.

2 WITNESS: We had deferred that in  
3 order to get all the plans hopefully in  
4 place.

5 BY MR. GARREN:

6 Q Now, we saw an exhibit earlier today that  
7 talked about cattle eating grass and that in fact  
8 less than 5 percent of the ration is brought into  
9 the water shed.

10 Do you know how much of the ration that is  
11 supplied to the millions of birds that are produced  
12 in the water shed come in from outside the water  
13 shed?

14 MR. GEORGE: Object to the form.  
15 Outside the scope of cross.

16 WITNESS: No, I do not.

17 BY MR. GARREN:

18 Q And in Exhibit 16, Mr. George asked you to look  
19 at a schedule there -- I'm sorry. It's actually  
20 Exhibit Five, page 16, on the non-point source  
21 status report and the table in the upper right hand  
22 corner on page 16 of that report.

23 A Yes.

24 Q Now, we're all appreciative of you being able  
25 to add in your head the amount of tons produced

1     there.  However, you don't know whether the tons  
2     being produced here are wet versus dry, do you?  How  
3     they're being reported?

4     **A**     No.

5     **Q**     You don't know whether they're equated with  
6     regard to animal units being produced as to the  
7     amount of tons been produced either, do you?

8     **A**     No.  Well, since -- no, I don't know.

9     **Q**     All right.  So, in making that comparison, we  
10    could be talking apples and oranges, because you  
11    don't know how it's being reported here, do you?

12                   MR. GEORGE:  Object to form.

13                   WITNESS:  I don't.

14    BY MR. GARREN:

15    **Q**     All right.  You made a statement -- I think it  
16    was -- maybe I heard it out of context, but you said  
17    it was four to five years after we started our  
18    program that Oklahoma started theirs.  You said  
19    words to that effect.

20    **A**     Yes.

21    **Q**     And in fact isn't it true, sir, that  
22    regulations enacted in the State of Oklahoma with  
23    regard to poultry feeding operations were enacted in  
24    1998 in the State of Oklahoma?

25    **A**     That's correct.  What I was making reference to

1 is, we started our voluntary incentive program four  
2 to five years ahead of Oklahoma putting anything in  
3 place.

4 Q Okay. But, again, it was strictly voluntary,  
5 wasn't it?

6 A That's correct.

7 Q And Oklahoma in fact has had a non-voluntary  
8 program in place almost ten years before Arkansas  
9 did regarding the poultry feeding operations;  
10 correct?

11 MR. GEORGE: Object to form.

12 WITNESS: Seven years or so, but they  
13 didn't include commercial fertilizing.

14 BY MR. GARREN:

15 Q Would you agree with me that in addition to  
16 being a high -- Benton and Washington County being  
17 large cattle producers, they are also probably one  
18 of the top poultry producing counties in the  
19 country?

20 A I would say that's probably true.

21 Q Can you tell me why it is, sir, that in order  
22 for you to take an enforcement action on a complaint  
23 it must be notarized and subject to public scrutiny  
24 where the name of the farmer and what the farmer is  
25 actually doing on his land is not subject to public

1 scrutiny in the records of your agency?

2 MR. GEORGE: Object to form.

3 WITNESS: That's what the law  
4 provides for.

5 BY MR. GARREN:

6 Q And were you in part participating with the  
7 enactment of that law?

8 A I was lobbying for it.

9 Q Okay. And in those --

10 A For the law, not necessarily for that --

11 Q Yes.

12 A -- specific provision.

13 Q And I think you said that it was Oklahoma or  
14 the Arkansas Farm Bureau that was promoting that  
15 non-public records parts of the act; correct?

16 A Correct.

17 Q And did they ever tell you why they wanted to  
18 keep it secret as to what the poultry farmers were  
19 doing in Arkansas?

20 MR. GEORGE: Object to form.

21 WITNESS: Not specifically. I could  
22 speculate about it.

23 BY MR. GARREN:

24 Q And we could speculate, can you not, sir, that  
25 it's almost somewhat intimidating for maybe a

1 neighbor to rat on another neighbor for violations  
2 when they have to be in public record under oath and  
3 the farmer is completely secreted from public  
4 scrutiny?

5 MR. GEORGE: Object to the form.

6 WITNESS: No. I think that's what it  
7 has to do with.

8 BY MR. GARREN:

9 Q Yeah. You were asked whether or not the  
10 federal government asked you to -- as a state to  
11 enact any rules, laws or regulations. In fact, many  
12 of the regulations that we're seeing are coming into  
13 being as a result in part from the Clean Water Act  
14 the federal government has enacted; correct?

15 A You're talking about this nutrient management?

16 Q Nutrient management and things of that nature.

17 A No, I don't understand so at all.

18 Q You don't think so?

19 A Huh-uh.

20 MR. GARREN: I have no other  
21 questions.

22 VIDEOGRAPHER: This concludes the  
23 deposition at 3:15 p.m. We're off the  
24 record.)

25

## 1 C E R T I F I C A T E

2 STATE OF ARKANSAS )  
3 ) SS.

4 COUNTY OF PULASKI )

5 I, Robin E. Johnson, Certified Court Reporter  
6 and notary public in and for the County of Pulaski,  
7 State of Arkansas, duly commissioned and acting, do  
8 hereby certify that the witness herein was by me first  
9 duly sworn to testify to the whole truth and nothing but  
10 the truth prior to taking down in Stenotype the  
11 questions, answers and proceedings during said  
12 deposition, and from such recordation was thereafter  
13 reduced to print by means of computer-assisted  
14 transcription, and the same fully, truly, and correctly  
15 reflects the proceedings had.

16 I FURTHER CERTIFY that all formalities with  
17 regard to notice, issuance of commission, taking,  
18 signing, and returning are hereby waived; said  
19 deposition being taken with the same force and effect as  
20 though all the requirements of the rules and statutes  
21 have been complied with.

22 I FURTHER CERTIFY that the above deposition  
23 was given by the witness and taken at the times and in  
24 the place hereinabove set forth.

25 I FURTHER CERTIFY that I am not attorney or  
counsel of any of the parties, nor am I a relative or

1 employee of any attorney or counsel or party connected  
2 with the action, and have no interest in the outcome or  
3 results of this litigation.

4 WHEREFORE, I have subscribed my signature and  
5 affixed my notarial seal as such notary public at the  
6 City of Little Rock, County of Pulaski, State of  
7 Arkansas, this 30th day of October, 2008.

8  
9  
10 \_\_\_\_\_  
ROBIN E. JOHNSON, C.C.R.  
11 NOTARY PUBLIC IN AND FOR  
PULASKI COUNTY, ARKANSAS  
12 LS CERTIFICATE NO. 319

13 MY COMMISSION EXPIRES:  
14 September 1, 2011  
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